

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re:	)	
	)	
Implementation of Section 6002(b) of the	)	WT Docket No. 09-66
Omnibus Budget Reconciliation Act	)	
of 1993	)	
	)	
Annual Report and Analysis of	)	
Competitive Market Condition With	)	
Respect to Mobile Wireless including	)	
Commercial Mobile Services	)	

**COMMENTS OF RURAL CELLULAR ASSOCIATION**

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## SUMMARY

In its *Notice of Inquiry*, the Commission expressed an interest in “the current state of competition in the entire mobile wireless market ecosystem . . . .” Its assessment of the current state of competition should take a fresh perspective: The Commission should examine the impact of the nation’s four largest carriers’ (the “Big 4”) market power on the competitiveness of smaller rural and regional carriers. Specifically, the agency should chart the extent of the chasm that has grown between the Big 4 and smaller rural and regional carriers (in terms of revenues, market share, spectrum license holdings, coverage of the U.S. population, etc.), and then evaluate the impact of these disparities on the present and future state of competition and on consumers. As part of that examination, the Commission should explore two issues harming the competitive vibrancy of the U.S. mobile wireless market: the growing use of exclusive handset arrangements by the Big 4 and the anticompetitive roaming practices of these same carriers. RCA believes that such an evaluation in the context of its *Mobile Wireless Competition Report* will demonstrate that the competitive underpinnings of the mobile wireless market ecosystem are being worn down by the imbalance between the Big 4 and all other wireless carriers.

The policy concerns that RCA first raised with the Commission last year with regard to ongoing efforts by the nation’s largest carriers to lock up the distribution of handsets for extended periods of time are appropriate to raise in this proceeding, particularly given the fact that the Commission plans to cover the device segment of the mobile wireless marketplace in its *Report*. RCA believes that an assessment by the Commission will show that exclusive handset deals have a harmful effect on competition, especially in smaller rural and regional markets. Although smaller rural and regional carriers are attempting to hold their own against the nation’s largest carriers—based on price, service quality, customer service, and similar factors—in areas

where they directly compete, the burgeoning size of Verizon Wireless and AT&T, and the collective market power wielded by the Big 4, make it unfairly difficult for smaller rural and regional carriers to compete effectively against the national carriers. Exclusive handset deals are both a reflection of this market power and a means by which this power is preserved and extended. Consumers do not reap any benefits from the arrangements.

The Commission's analytical framework for evaluating the competitiveness of the mobile wireless marketplace should also focus on the importance of roaming services, and should evaluate whether and to what extent current practices of the large national carriers are adversely affecting roaming and harming competition. RCA believes that a proper treatment of roaming services in the *Mobile Wireless Competition Report* should involve an acknowledgment that roaming is critically important to the maintenance and promotion of a competitive mobile wireless market ecosystem. This is especially true for smaller rural and regional carriers.

For smaller rural and regional carriers to be able to maintain their competitive position in a marketplace dominated by the Big 4 carriers, the smaller carriers must be in a position to meet their customers' expectations regarding the range and scope of services these carriers are able to provide. These expectations increasingly include the provision of a nationwide footprint and data roaming services. To the extent smaller rural and regional carriers cannot meet these customer expectations because the Big 4 routinely stymie their efforts to obtain automatic data roaming agreements with reasonable rates, terms and conditions, smaller carriers will continue to face an erosion of their competitive position, with consequent loss of customers and revenues.

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**COMMENTS OF RURAL CELLULAR ASSOCIATION**

Rural Cellular Association (“RCA”),<sup>1</sup> by its attorneys, hereby submits these Comments in response to the *Notice of Inquiry* adopted by the Commission in the above-captioned proceeding. The purposes of the *Notice of Inquiry* include inquiring about the state of competition in the commercial mobile radio service (“CMRS”) market, and seeking information to assist in the agency’s analysis of both the CMRS market and the broader mobile wireless market.<sup>2</sup> The record in the *Notice of Inquiry* proceeding will be used by the Commission in connection with its preparation of a report to be entitled the “Annual Report and Analysis of Competitive Market

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<sup>1</sup> RCA is an association representing the interests of approximately 90 small, mid-sized, and regional wireless licensees providing commercial services to subscribers throughout the Nation and geographically licensed to serve over 80 percent of the United States. Most of RCA’s members serve fewer than 500,000 customers.

<sup>2</sup> See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66, *Notice of Inquiry*, FCC 09-67, rel. Aug. 27, 2009 (“*Notice of Inquiry*”). See Commission Extends Comment and Reply Comment Deadlines for Mobile Wireless Competition Notice of Inquiry (FCC 09-67), *Public Notice*, FCC 09-72, rel. Sept. 10, 2009.

Conditions with Respect to Mobile Wireless including Commercial Mobile Services” (“*Mobile Wireless Competition Report*” or “*Report*”).<sup>3</sup>

## **I. INTRODUCTION.**

It is clear that the Commission’s assessment of the current state of competition in the context of its *Notice of Inquiry* should take a fresh perspective. The Commission should examine the impact of the nation’s largest wireless carriers’ (the “Big 4”) market power on the competitiveness of smaller rural and regional carriers. Specifically, the agency should investigate the extent of the chasm that has grown between the Big 4 carriers and smaller rural and regional carriers (in terms of revenues, market share, spectrum license holdings, coverage of the U.S. population, etc.), and then evaluate the impact of these disparities on the present and future state of competition and on consumers. In so doing, the Commission should pay particular attention to two issues harming the competitive vibrancy of the U.S. mobile wireless market: the proliferation of exclusive handset arrangements by the nation’s four largest carriers and the anticompetitive roaming practices of these same carriers. RCA believes that an analysis of these two issues (perhaps, among others) in developing its *Mobile Wireless Competition Report* will demonstrate that the competitive underpinnings of the mobile wireless ecosystem are being worn down by the imbalance between the nation’s Big 4 and all other wireless carriers.

## **II. THE MOBILE WIRELESS COMPETITION REPORT SHOULD EVALUATE THE EXTENT TO WHICH EXCLUSIVE HANDSET DEALS DRIVEN BY THE NATION’S LARGEST CARRIERS ARE HARMING CONSUMERS AND COMPETITION IN THE MOBILE WIRELESS MARKETPLACE.**

Exclusive arrangements between each of the Big 4 and various handset manufacturers, which prohibit the manufacturers from distributing handsets covered by the deals to any other

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<sup>3</sup> *Notice of Inquiry*, at para. 4.

carriers, continue to be a focus of concern among policymakers.<sup>4</sup> In fact, Chairman Genachowski, during Senate hearings in June regarding his nomination to serve as Chairman, addressed questions raised about handset exclusivity agreements and committed to acting “to promote competition and consumer choice” based upon a review of the full record in a rulemaking proceeding initiated in response to a petition filed by RCA.<sup>5</sup>

The policy concerns that are being raised with regard to ongoing efforts by the Big 4 carriers to lock up the distribution of new and popular handsets for extended periods of time make it appropriate for the Commission to undertake a comprehensive assessment of the scope and implications of these practices in the *Mobile Wireless Competition Report*, particularly given the fact that the Commission plans to cover the device segment of the mobile wireless marketplace as part of its analysis in the *Report*.<sup>6</sup>

RCA believes that such an analysis by the Commission will show that exclusive handset deals have a harmful effect on competition, especially in smaller rural and regional markets. The burgeoning size of Verizon Wireless and AT&T, and the collective market power wielded by the

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<sup>4</sup> See, e.g., Letter from Senator John F. Kerry, Senator Roger F. Wicker, Senator Byron L. Dorgan & Senator Amy Klobuchar, to Michael J. Copps, Acting Chairman, and Commissioners, June 15, 2009, at 1 (expressing “concern regarding the use of exclusivity arrangements between commercial wireless carriers and handset manufacturers with respect to wireless handsets that are made available to consumers” and requesting the Commission to examine, *inter alia*, “[w]hether exclusivity agreements are manipulating the competitive marketplace between commercial wireless carriers. Specifically, whether the ability for a dominant carrier to reach an exclusive agreement with a handset manufacturer is inhibiting the ability of smaller, more regional carriers to compete . . . .”); see also Letter from Senator Herb Kohl, Chairman, Subcomm. on Antitrust, Competition Policy and Consumer Rights, S. Comm. on the Judiciary, to Hon. Christine Varney, Assistant Attorney General – Antitrust Division, Department of Justice, and Hon. Julius Genachowski, Chairman, FCC (July 6, 2009) (“Kohl Letter”), at 1 (noting that “the practice of the large cell phone companies gaining exclusive deals to the most in-demand cell phones is a serious barrier to competition.” (“Kohl Letter”).

<sup>5</sup> Matthew Lasar, “Genachowski: FCC Will Probe Exclusive Handset Deals,” ARS TECHNICA, June 21, 2009, accessed at <http://arstechnica.com/tech-policy/news/2009/06/genachowski-tells-kerry-hell-probe-wireless-handsets-and-lots-more.ars>. See RCA, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008).

<sup>6</sup> Notice of Inquiry at para. 5.

Big 4, make it unfairly difficult for smaller rural and regional carriers to compete effectively against the national carriers. Exclusive handset deals are both a reflection of this market power, and a means by which this power is preserved and extended. Moreover, the Big 4 carriers' exclusive handset deals are not crafted with the interests of consumers in mind. In fact, consumers do not reap any benefits from the arrangements.

**A. Market Concentration Skews Competition in the Mobile Wireless Marketplace, and Exclusive Handset Deals Contribute to Growing Imbalances in Market Power.**

The Commission has expressed an interest in “the current state of competition in the entire mobile wireless market ecosystem . . . .”<sup>7</sup> This assessment of the current state of competition should take a fresh perspective: The Commission should examine the impact of the Big 4 carriers' market power on the competitiveness of smaller rural and regional carriers. RCA believes that such an evaluation in the *Mobile Wireless Competition Report* will demonstrate that the competitive underpinnings of the ecosystem are being worn down by the imbalance between the Big 4 carriers and all other wireless carriers, and that exclusive handset deals threaten to perpetuate and extend this imbalance.

**1. The Mobile Wireless Competition Report Should Focus on the Disparate Market Power of the National Carriers and the Smaller Rural and Regional Carriers.**

It is reasonable to say that the mobile wireless marketplace is comprised of the Big 4 carriers (or perhaps just Verizon Wireless and AT&T) and everybody else. Recent estimates suggest that the Big 4 carriers “serve about 90 percent of U.S. wireless subscribers”<sup>8</sup> and that AT&T

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<sup>7</sup> *Id.* at para. 1.

<sup>8</sup> Todd Shields & Amy Thomson, “FCC to Probe Competition in the Wireless Market (Update 4),” BLOOMBERG.COM, Aug. 27, 2009, accessed at <http://www.bloomberg.com/apps/news?pid=20601110&sid=aMvcmY8AMvX8> (“Shields & Thomson”).



and Verizon Wireless “account for about 60 percent of subscribers nationwide.”<sup>9</sup> Verizon Wireless recently reported 87.7 million customers, while AT&T indicated in a recent report that it has 79.6 million subscribers.<sup>10</sup> In contrast, most of RCA’s member carriers have less than 500,000 subscribers.

This alarming concentration in the wireless marketplace has been fueled by recent acquisitions, license swapping, and spectrum license acquisitions in the Commission’s auctions.<sup>11</sup> Many believe that these trends provide evidence that the state of wireless competition is in decline, and are concerned that the trends portend the reemergence of a duopoly that will have sufficient market power to dominate the mobile wireless marketplace.<sup>12</sup> RCA believes that the growth of the national carriers should lead the Commission to analyze mobile wireless competition from a different angle.

Specifically, the agency should chart the extent of the chasm that has grown between the Big 4 carriers and smaller rural and regional carriers (in terms of revenues, market share, spectrum license holdings, coverage of the U.S. population, etc.), and then evaluate the impact of

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<sup>9</sup> *The Consumer Wireless Experience: Hearing Before the S. Comm. on Commerce, Science and Transportation*, 111th Cong., Written Statement of John E. Rooney, President & Chief Executive Officer, United States Cellular Corporation (June 17, 2009), at 2. Other estimates range as high as a 65 percent share. See *An Examination of Competition in the Wireless Industry: Hearing Before the Subcomm. on Communications, Technology, and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong., Written Statement of Victor H. “Hu” Meena, President and Chief Executive Officer, Cellular South, Inc. (May 7, 2009) (“Meena Testimony”), at 1-2.

<sup>10</sup> Shields & Thomson.

<sup>11</sup> See Comments of Cellular South, Inc., filed June 15, 2009, in response to “Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition,” DA 09-1070, WT Docket No. 09-66, *Public Notice*, rel. May 14, 2009 (“Cellular South CMRS Competition Comments”), at 3-4; see also AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, DA 09-1350, *Public Notice*, rel. June 19, 2009 (representing yet another spectrum transaction between the nation’s two largest wireless carriers that will ensure their continued collective dominance of the wireless industry).

<sup>12</sup> See, e.g., Kohl Letter, at 1 (noting that members of the subcommittee “have become concerned with emerging barriers to competition in an already highly concentrated market.”).

these disparities on the present and future state of competition and on consumers. As RCA discusses in the next section, a good place to start is the issue of handset exclusivity.<sup>13</sup>

**2. The Commission Should Examine the Extent to Which Exclusive Handset Deals Erode Competition in the Mobile Wireless Marketplace.**

A useful conceptual construct for evaluating the competitive implications of exclusive handset deals is to view each such arrangement as giving the carrier involved a monopoly over distribution of, and access to, the handset involved. Observed from this perspective, the “high end” handset market (*i.e.*, the newest, most innovative, and most popular handsets) is in the grip of a pervasive monopoly.

Recent data shows that, of the 50 most popular handsets, 46 are locked up in exclusive deals between the Big 4 carriers and handset manufacturers.<sup>14</sup> The *Mobile Wireless Competition Report* should examine how and to what extent this pervasive use of exclusive handset arrangements by the Big 4 carriers is influencing the course of competition in the mobile wireless ecosystem. Concerns about this influence have grown to such a point that even the CEO of one of the Big 4 carriers has conceded that steps that would mitigate the competitive effects of exclu-

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<sup>13</sup> RCA learned recently that a similar “anti-competitive” problem has developed with respect to the Lower 700 MHz Band A Block, *i.e.*, the market power possessed by Verizon Wireless and AT&T is enabling them to drive 700 MHz equipment development that is precluding any near-term production in bulk of handsets usable in the Lower A Block, thus further harming the ability of smaller rural and regional carriers with 700 MHz A Block licenses from building out broadband and other services in the A Block. See 700 MHz Block A Good Faith Purchasers Alliance’s Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, RM- \_\_\_\_\_ (filed Sept. 29, 2009).

<sup>14</sup> See Avian Securities, LLC, *Wireless Handsets: Monthly U.S. Retail Store Survey* (September 1, 2009). According to Avian Securities, the firm’s proprietary survey is based on responses from 100 service representatives at retail stores of the four major U.S. wireless carriers—AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile USA. Whether particular handsets are subject to exclusive arrangements was determined by reviewing information regarding the availability of handsets posted on the websites of the Big 4 carriers, the manufacturers of these handsets and smaller carriers.

sive handset deals should be explored.<sup>15</sup> RCA believes that exclusive handset deals adversely affect competition in the wireless marketplace in at least two ways.

First, although smaller rural and regional carriers are capable of holding their own against the Big 4 carriers—based on price, service quality, customer service, and similar factors—in areas where they directly compete, the ability of the smaller carriers to do so is undercut by their lack of access to the most popular and innovative handsets. The principal reason for this is the fact that many consumers select their wireless carrier based upon the handsets that can be provided by that carrier, with one study showing that more than 50 percent of consumers treat handset selection as a major factor in selecting their carrier, and that 24 percent of consumers select their carrier exclusively on the basis of the carrier’s handset portfolio.<sup>16</sup>

Given the evidence that handsets drive consumer selections of their service providers, it follows that any carrier that can monopolize access to popular and innovative handsets will gain a competitive advantage. The corollary, of course, is that smaller rural and regional carriers that do not have the purchasing power to command exclusive deals with handset manufacturers are placed at a competitive disadvantage in their efforts to gain new customers and retain existing customers.

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<sup>15</sup> See Marin Perez, “Sprint CEO: Exclusivity Periods Should Be Questioned,” INFORMATION WEEK, Sept. 18, 2009, accessed at <http://www.informationweek.com/news/mobility/business/showArticle.jhtml?articleID=220001119> (reporting that Dan Hesse, Sprint Nextel’s Chief Executive Officer, defended exclusive handset deals but also supported the view that a legitimate question for government policymakers to examine is “how long the exclusivity periods need to be”).

<sup>16</sup> Rita Chang, *Proof That Handset Brands Help Sell Wireless Plans*, RCR WIRELESS NEWS, Oct. 28, 2008 (“Chang”), accessed at <http://www.rcrwireless.com/article/20081028/WIRELESS/810289995/1081/proof-that-handset-brands-help-sell-wireless-plans#>, cited in Cellular South CMRS Competition Comments at 12.

Second, exclusive handset agreements make it more difficult for potential competitors to enter the mobile wireless marketplace.<sup>17</sup> It is difficult for potential new entrants to justify the high level of capital investments and other expenditures necessary to enter particular mobile wireless markets if an important component of their ability to compete—namely, their being able to meet prospective customer demand for new and innovative handsets—is taken off the table by exclusive handset deals orchestrated by incumbent national carriers.

The *Mobile Wireless Competition Report* also should review another competitive implication of exclusive handset deals: These handset deals may represent a slippery slope leading in the direction of exclusive deals aimed at giving the Big 4 carriers a competitive advantage in other sectors of the mobile wireless market ecosystem.<sup>18</sup> For example, some of the Big 4 carriers are now marketing “netbooks”<sup>19</sup> to existing and new customers through exclusive arrangements with computer manufacturers.<sup>20</sup> There also have been reports that the large carriers favor exclusive deals for other “emerging devices” (*e.g.*, electronic readers, portable navigation devices) that can be attached to cellular networks, “similar to the way they market their handsets.”<sup>21</sup> Examination of these developments by the Commission in the *Mobile Wireless Competition Report* would be a useful first step toward ensuring that the harms to competition and consumer welfare

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<sup>17</sup> See *Notice of Inquiry* at para. 28 (the Commission is seeking comment on “any barriers to entry or growth that exist in the mobile wireless market”).

<sup>18</sup> See *id.* at para. 16 (the Commission is “seek[ing] to develop a more detailed understanding of the device market segments and how different wireless devices—including, for example, smartphones, netbooks, and modems/aircards—should be examined and evaluated”).

<sup>19</sup> Netbooks are small laptop computers generally suitable for accessing web-based applications, as well as for general computing tasks.

<sup>20</sup> See Meena Testimony at 3-4 (stating that several netbook manufacturers have indicated that “the largest carriers are already demanding exclusive models of these wireless devices”).

<sup>21</sup> Elizabeth Woyke, “AT&T and Verizon’s Start-Up Mentality,” *FORBES*, Apr. 3, 2009, accessed at [http://www.forbes.com/2009/04/03/att-verizon-gadgets-technology-wireless-gadgets\\_print.html](http://www.forbes.com/2009/04/03/att-verizon-gadgets-technology-wireless-gadgets_print.html).

that are manifested by exclusive handset deals do not metastasize throughout the mobile wireless market ecosystem.

**B. The Mobile Wireless Competition Report Should Examine the Extent to Which the Anti-Competitive Effects of Exclusive Handset Arrangements Are Harmful to Consumer Welfare.**

Consumers have a stake in the Commission's efforts to promote vibrant competition in the mobile wireless marketplace, and consumers are increasingly aware of the fact that exclusive handset deals may work against the agency's pro-competitive objectives.<sup>22</sup> The *Mobile Wireless Competition Report* should include an assessment of how consumer welfare is adversely affected by exclusive handset deals.

RCA believes that exclusive handset arrangements can harm consumer welfare in several ways, including the following. First, the Commission has pointed out that "not all consumers have equal access to the same services, handsets, and applications[,]"<sup>23</sup> and that whether a consumer lives in a rural or urban area is an important factor in determining the degree of access.<sup>24</sup> In the case of handsets, this problem of access is pronounced because the Big 4 carriers currently do not provide any service in many rural areas throughout the Nation.<sup>25</sup> In light of the fact that 46 of the 50 most popular handsets are subject to exclusive deals,<sup>26</sup> this means that customers in smaller rural and regional markets that are not served by any or all of the Big 4 carriers are likely

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<sup>22</sup> See, e.g., "More Choice for Cellphone Users," PARADE, Aug. 30, 2009, accessed at <http://www.parade.com/news/intelligence-report/archive/090830-more-choice-for-cellphone-users.html> (an online poll conducted by the magazine shows that, as of September 25, 2009, 88 percent of respondents indicated they favor prohibiting exclusivity agreements between wireless service providers and hardware makers).

<sup>23</sup> *Notice of Inquiry* at para. 33.

<sup>24</sup> *Id.*

<sup>25</sup> See Reply Comments of RCA, filed July 13, 2009, in response to "Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition," DA 09-1070, WT Docket No. 09-66, *Public Notice*, rel. May 14, 2009 ("RCA CMRS Competition Reply Comments"), at 7.

<sup>26</sup> See Section II.A.2., *supra*.

to have virtually no access to many of the most popular and innovative handsets sold in the U.S. today.

Second, exclusive handset deals can result in high costs for consumers.<sup>27</sup> Exclusive deals, by their nature, mean that customers desiring any particular handset model covered by such a deal have only one option for obtaining the handset: They must sign up with the carrier that controls access to the desired handset. This exclusivity provides the carrier with an opportunity to exact a supra-competitive rent from the customer, both with respect to charges for the handset itself, and also for monthly charges for the carrier's services.

Third, the Big 4 carriers with exclusive handset deals are also in a position to leverage these deals into requiring both existing and new customers to commit to extended service contract arrangements, because customers who have only one option for obtaining particular new and innovative handsets that they desire are more willing to absorb the trade-off of committing to a longer term contract.

Finally, as a general matter, the anti-competitive aspects of exclusive handset arrangements that have been discussed in a previous section ultimately are harmful to consumers. Competition brings with it a host of benefits, including lower prices, improvements in customer care, better service quality, and more customer choices for services and equipment. These benefits are placed in jeopardy if competition is diminished. For this reason, it is important for the Commission to seek to provide in the *Mobile Wireless Competition Report* a quantitative and qualitative

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<sup>27</sup> See, e.g., RCA Press Release, "RCA Urges End to Anti-Consumer Handset Exclusivity Deals in Wake of Congressional Hearing Today," Sept. 17, 2009, at 1 (noting that "[e]xclusivity agreements also drive up the cost of wireless plans for all Americans because they short-circuit competition between wireless carriers. When exclusive devices only exist on a single network, consumers cannot choose freely between wireless providers. Americans today pay as much as \$200 more each year for their wireless plans compared to consumers in Europe, where customers are allowed to match the device and their wireless plan free of exclusivity agreements.").

assessment of the extent to which exclusive handset deals are reducing the level of competition in the mobile wireless marketplace.

### **III. THE MOBILE WIRELESS COMPETITION REPORT SHOULD REVIEW THE ANTI-COMPETITIVE EFFECTS OF THE ROAMING PRACTICES OF THE BIG 4 CARRIERS.**

The Commission has asked interested parties “to provide . . . general comment on the proper treatment of roaming services in the [broad] analytical framework under consideration” in the *Notice of Inquiry*.<sup>28</sup> The Commission’s analytical framework for evaluating the competitiveness of the mobile wireless marketplace should focus on the importance of roaming services, and should evaluate whether and to what extent current practices of the large national carriers are adversely affecting roaming, and thus harming competition.

#### **A. The Availability and Efficient Operation of Roaming Services Are Important Components of a Competitive Mobile Wireless Marketplace.**

RCA believes that a proper treatment of roaming services in the *Mobile Wireless Competition Report* should involve an acknowledgment that roaming is critically important to the maintenance and promotion of a competitive mobile wireless market ecosystem. This is especially true for smaller rural and regional carriers, in part because “roaming revenues typically account for a higher percentage of total service revenues for rural and smaller regional providers than for nationwide carriers.”<sup>29</sup>

For smaller rural and regional carriers to be able to maintain their competitive position in a marketplace dominated by the Big 4 carriers, the smaller carriers must be in a position to meet their customers’ expectations regarding the range and scope of services these carriers are able to

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<sup>28</sup> *Notice of Inquiry* at para. 22.

<sup>29</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, WT Docket No. 08-27, *Thirteenth Report*, 24 FCC Rcd 6185, 6261 (para. 156) (2009) (footnote omitted).

provide. These expectations increasingly include the provision of a nationwide footprint, so that customers subscribing to the services of a smaller rural or regional carrier can rely upon that carrier's enabling the customer to place calls from anywhere and to anywhere in the country. In addition, customers of rural and regional carriers increasingly expect the availability of data roaming services when they travel away from their home service area. To the extent smaller carriers cannot meet these customer expectations, they face an erosion of their competitive position, with consequent loss of customers and revenues.

**B. The Roaming Practices of the Big 4 Carriers Undercut Any Conclusion that the Mobile Wireless Marketplace Enjoys Vibrant Competition.**

Because of the fact that each of the Big 4 carriers has established a nationwide, or near-nationwide, footprint as a result of its spectrum holdings, none of the Big 4 carriers has any incentive to enter into reasonable automatic data roaming agreements with the smaller rural and regional carriers.<sup>30</sup> As a consequence, the Big 4 carriers, not surprisingly, have stymied the efforts of smaller rural and regional carriers to obtain automatic data roaming agreements with reasonable rates, terms, and conditions.<sup>31</sup>

If the mobile wireless marketplace were reasonably competitive, then competing carriers would have roughly equivalent incentives with respect to mobile data roaming agreements. In other words, the competitive marketplace would work efficiently and effectively to enable all carriers to meet customers' expectations regarding the availability of mobile data services with a national footprint. The fact is, however, that the current mobile wireless marketplace is not working in such a manner. The Commission should confront this fact in the *Mobile Wireless*

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<sup>30</sup> The Commission has established automatic roaming requirements for voice services, but has not yet done so for mobile data services. Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15845 (para. 77) (2007), *petitions for recon. filed*.

<sup>31</sup> See RCA CMRS Competition Reply Comments at 12-13 & nn. 35-38.



*Competition Report* and draw the resulting conclusions about the current state of mobile wireless competition.

Although RCA recognizes that the pursuit of remedies to the data roaming problems faced by smaller rural and regional carriers is beyond the scope of this proceeding,<sup>32</sup> RCA notes briefly that, given the fact that the mobile wireless marketplace is unable to sufficiently protect consumer welfare by generating reasonable automatic data roaming agreements among competing carriers, the Commission should step in to require such agreements. Such action is necessary because “[a]n automatic data roaming obligation is critical to the continued growth of competitive wireless service offerings that will discipline the pricing and services of the large incumbent wireless operators.”<sup>33</sup>

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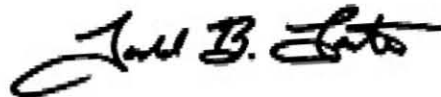
<sup>32</sup> *See Notice of Inquiry* at para. 22.

<sup>33</sup> Kohl Letter at 2.

#### IV. CONCLUSION.

The Commission's *Notice of Inquiry* provides yet another opportunity for the Commission to curb the competitive and consumer harms caused by exclusive handset arrangements – an inherently anticompetitive practice engaged in primarily by the nation's four largest wireless carriers that is growing in popularity – and the anticompetitive roaming practices of these same carriers. Given the compelling data submitted to the Commission on these issues over the years, RCA hopes that the Commission seizes this opportunity to adopt new rules that bring an end to exclusive handset arrangements and takes action to allow smaller wireless carriers to obtain automatic data roaming agreements at reasonable rates, terms, and conditions to create a more equitable and competitively vibrant marketplace for consumers and the nation's smaller wireless carriers.

Respectfully submitted,



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